IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1058/06

Mr.Vinod C. Shah .....Applicant

V/s.

The state of Maharashtra .... Respondent

Ms.Deepa Singh, Adv. with Shri Prakash Naik i/b M/s.Mahesh Menon and Co. for applicant.
Ms.Ranjana Pandit, Adv. holding for Shri.J.P. Mishra for Orig.complainant.
Ms.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATE : 17/04/06

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This is an application for an anticipatory bail. The applicant has an apprehension that he is likely to be arrested in connection with complaint bearing No.268/Misc/2005 filed in the Court of Additional Chief Metropolitan Magistrate, 47th Court at Mumbai, registered by the Cuffe Parade Police

Station vide C.R.No.7/2005 for the offences punishable U/s.409, 406, 403 r/w 114 of IPC.

3. It is alleged that M/s.IMP Power Limited a company situated at Mumbai had filed a private complaint on 11/11/2005 in the Court of Additional Chief Metropolitan Magistrate 47th Court, Mumbai. The learned Magistrate directed to police to investigate under the provisions of Sec.156(3) of Cr.P.C. In the complaint it is alleged that the complainant had imported certain goods for their own use. These raw materials which were essential Electrical Steel in Coils weighing 50.57 Tonnes was kept in 12 different coils. The complainant's case is that these goods were given to the applicant for doing a job work and further processing of coils. It is alleged that the delivery of the said good was taken by the applicant and these goods were not returned by him after a processing work was over and therefore, he had committed an offence of criminal breach of trust.

4. Learned Counsel appearing on behalf of the applicant submitted that the complainant had suppressed several facts in the complaint and

obtained that order U/s.156(3) of Cr.P.C. By suppressing facts. He submitted that high-seas agreement executed between complainant and the applicant in which it was agreed that the goods which were cleared by the applicant on their arrival by Ship. Entire amount towards purchase of goods would be paid by the applicant and necessary work of processing of raw material would be done by the applicant. On an advance payment by the complainant processed goods would be delivered to the complainant. He submitted that this entire amount towards the value of goods was paid by the applicant and further processing of the raw material was done. Not a single penny was paid by the complainant and therefore, pursuant to the high-seas agreement he had right to lien over the goods. He submitted that therefore, this was initially a civil dispute and criminal complaint was filed malafidely for the purpose of pressuring the applicant to return the goods without making a payment for the same. He invited my attention to the notice given by the complainant and reply to the said notice by the applicant in which all these facts had been clearly

stated. He also invited my attention to the payment made by the applicant towards the costs of said goods. He also invited my attention to the clause in the agreement which stipulates that money should be paid in advance by the complainant before taking delivery of the goods.

5. Learned Counsel appearing on behalf of the complainant on the other hand submitted that the applicant had demanded payment of other dues which was not a part of the present transaction. He submitted that after the goods are delivered, the complainant would make payment towards the goods. He submitted that the goods were imported pursuant to the import clearance which was given to them and he submitted that these goods were imported on a condition that the complainant uses these goods and puts them in use for the purpose for which it was imported. He submitted that, therefore, the applicant had no right to retain the goods. He submitted, therefore, that it is clear case of criminal breach of trust that he had committed. He submitted that in the Sessions Court time was taken by the complainant for the purpose of settling the dispute and a

statement had been made that the goods would be delivered and by suppressing this fact, interim order was obtained from this court.

6. After the matter was heard by this court an opportunity was given to both the parties to settle their difference. However, parties could not reconcile their difference. In my view, the applicant has made out a case for an anticipatory bail. The applicant has paid, prima facie, entire value towards the said goods which were purchased from three countries by executing high-seas agreement. In the agreement there is a clear clause which stipulates that before delivery is made, payment should be made in advance. This payment admittedly had not been made till today by the complainant. Cheques which were issued by the complainant had dishnoured and criminal complaint had been filed against the complainant by the present applicant. It is submitted by the complainant that the complainant had been discharged by the Magistrate in the said case. Be that as it may, fact remains that payment has not been made as stipulated in the contract. Taking into consideration the entire facts, in my view, prima

facie, it appears that this is a civil dispute between parties regarding purchase and sale of goods and payment of money towards the said goods which have been processed by the applicant, over and above paying entire costs of the goods which were imported by the complainant. In the result, in the event of arrest in the matter of complaint bearing No.268/Misc/2005 filed in the Court of Additional Chief Metropolitan Magistrate, 47th Court at Mumbai and which is registered by the Cuffe Parade Police Station vide C.R.No.7/2005, the applicant may be released on bail in the sum of Rs.25,000/- with one or two sureties in the like amount.

7. The applicant may report to concerned police station as and when called. 72 hours notice be given by the I.O. to the applicant since he is a resident of Ahmedabad(Gujarat).

8. Application is accordingly disposed of.

V.M. KANADE, J.